

MAY 28 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCISCO GUTIERREZ-
HERNANDEZ,

Defendant - Appellant.

No. 07-50446

D.C. No. CR-07-02441-JAH

MEMORANDUM *

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted May 20, 2008 **

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Francisco Gutierrez-Hernandez appeals from the 24-month sentence
imposed following his guilty-plea conviction for illegal reentry, in violation of

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

8 U.S.C. § 1326(a). We have jurisdiction under 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Gutierrez-Hernandez contends that his sentence is procedurally unreasonable because the district court placed improper weight on his criminal history, failed to properly respond to his arguments at sentencing, and failed to conduct an individualized analysis in light of the factors contained in 18 U.S.C. § 3553(a). He further contends that the district court failed to provide sufficient reasoning pursuant to 18 U.S.C. § 3553(c) in imposing his sentence.

The record reflects, however, that in imposing a sentence at the bottom of the Guidelines range, the district court specifically noted that it had considered his contentions and considered the § 3553(a) factors without giving undue weight to any single factor. *See Rita v. United States*, 127 S. Ct. 2456, 2468-69 (2007). In addition, the court stated the reasons for the sentence imposed in enough detail to demonstrate that it had “considered the parties’ arguments and ha[d] a reasoned basis for exercising [its] own legal decisionmaking authority.” *Id.*; *see also United States v. Carty*, Nos. 05-10200, 05-30120, 2008 WL 763770, at *8 (9th Cir. Mar. 24 2008) (en banc).

We remand to the district court with instructions to correct the reference in the judgment to “8 U.S.C. § 1326(a) & (b).” *See United States v. Herrera-Blanco*,

232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

AFFIRMED; REMANDED to correct judgment.